

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID LITMON, JR.,

No. C-10-3894 EMC

Plaintiffs

v.

EDMUND G. BROWN, Attorney General of  
California,

Defendants.

**ORDER RE PLAINTIFF'S MOTION  
FOR LEAVE TO FILE AMENDED  
COMPLAINT**

On March 15, 2011, this Court granted Defendant Brown's motion to dismiss the complaint and entered judgment accordingly. On March 16, the Plaintiff, evidently without knowledge of said order and judgment, filed a request to file a first amended complaint adding a new cause of action – a claim under the Equal Protection Clause – and naming as an additional defendant, Kamala Harris. On March 21, 2011, this Court entered an order treating the Plaintiff's filing as a request for reconsideration under either Rule 59(e) or 60(b) and seeking leave under Rule 15 to amend the complaint. In that order, the Court granted the motion for reconsideration to the extent it allowed the Plaintiff to seek leave to amend the complaint. It ordered Defendants to respond to the motion for such leave. After that matter was briefed, on April 14, 2011, Plaintiff filed a notice of appeal of the March 15 judgment.


Having reviewed the papers, the Court is inclined to grant Plaintiff leave to file an amended complaint provided the complaint is limited to one claim under the Equal Protection Clause and is directed to Defendant Brown and not Defendant Harris (Plaintiff clarified in his reply that said claim

1 is directed solely against Defendant Brown). However, because Plaintiff filed a notice of appeal,  
2 this Court is without jurisdiction to grant the relief Plaintiff seeks.

3 Under Rule 62.1(a)(3), this Court indicates it would so grant the motion permitting leave to  
4 file an amended complaint and perforce set aside the judgment if the Ninth Circuit were to remand  
5 the matter. Plaintiff shall provide the appropriate notice to the circuit clerk as specified in Rule  
6 62.1(b). Alternatively, Plaintiff may dismiss the appeal. If Plaintiff does so, the judgment herein  
7 will be set aside, and Plaintiff shall file an amended complaint asserting on the Equal Protection  
8 claim against Defendant Brown within 30 days of said dismissal, and Defendant shall respond  
9 within 30 days thereafter.

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11 IT IS SO ORDERED.

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13 Dated: April 15, 2011

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15 EDWARD M. CHEN  
16 United States Magistrate Judge  
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v.

**CERTIFICATE OF SERVICE**

EDMUND G. BROWN, Attorney General of  
California,

Defendants.

\_\_\_\_\_ /

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

**DAVID LITMON, JR.**  
29083 Mission Boulevard, Apt. 207  
Hayward, CA 94544

Dated: April 15, 2011

RICHARD W. WIEKING, CLERK

By:           /s/ Leni Doyle            
Leni Doyle  
Deputy Clerk